

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ST. PAUL MERCURY INSURANCE
COMPANY

Plaintiff,

v.

PHILADELPHIA HOUSING
AUTHORITY

Defendant.

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Civil Action No. 02-CV-3511

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MEMORANDUM IN SUPPORT OF MOTION TO COMPEL

Plaintiff St. Paul Mercury Insurance Company (“St. Paul”), by its undersigned attorneys, hereby submits this memorandum in support of its motion to compel production of electronic mail messages that have been withheld in discovery by Defendant Philadelphia Housing Authority.

FACTS

St. Paul served its first request for production of documents on Defendant PHA on or about October 30, 2002. The document request plainly called for all electronic mail messages relevant to the Richard Allen Homes Construction Project that is the subject matter of this case. St. Paul’s Request No. 1, for example, required PHA to produce “each and every document that constitutes, refers, relates or makes reference to the Project.” See Exhibit 1, St. Paul’s Request for Production of Documents. Depending on their subject matters, electronic mail messages relating to the project also probably fall within the scope of one of St. Paul’s other document requests. Id.

Further, the definition of “document” used by St. Paul in the document request closely tracks the definition of documents contained in Rule 34(a) of the Federal Rules of Civil Procedure, a definition that plainly includes documents maintained in electronic form. (See Advisory Committee Note to 1970 Amendment to Rule 34).

PHA produced documents to St. Paul in January and February, 2003, but did not include within the documents produced any electronic mail messages. PHA also did not notify St. Paul at that time that it was withholding electronic mail messages, or articulate any grounds for such withholding.

In its pretrial statement, provided to St. Paul on or about June 23, 2003, PHA disclosed for the first time the following information:

During the course of document production, in the course of which PHA produced tens of thousands of pages of documents to St. Paul, St. Paul inquired as to whether they were, in addition to the paper documents produced, e-mails relating to the project. On Friday afternoon, June 20, 2003, counsel for PHA were advised that there are such e-mails, but have not yet had an opportunity to determine the manner of collection, the number of e-mails involved, or the burden involved in reviewing such communications for relevance and privilege. See PHA’s pretrial memorandum at 27.

St. Paul immediately wrote to PHA, requesting production of the e-mails. See Exhibit 2. To date, PHA has not responded to that request.

ARGUMENT

PHA has acknowledged in its pretrial memorandum it possesses electronic mail documents relevant to the Richard Allen Homes project that is the subject matter of this case and responsive to St. Paul’s request for production of documents. St. Paul has politely sought production of those documents, but so far PHA has not responded to St. Paul’s requests for

production. There is no ground for these documents to be withheld any longer, and PHA has offered none.

CONCLUSION

For the reasons stated, this Court should enter an order compelling PHA to produce electronic mail messages that are responsive to St. Paul's request for production of documents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2003, **Plaintiff St.**

Paul Mercury Insurance Company's Memorandum in Support of Motion to Compel was

telecopied and mailed via first-class mail, postage prepaid, to:

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